

AMENDED IN ASSEMBLY MARCH 31, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 209**

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**Introduced by Assembly Member Ammiano**

January 31, 2011

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An act to amend Section ~~21082.4~~ 21092 of the Public Resources Code, relating to environmental quality.

### LEGISLATIVE COUNSEL'S DIGEST

AB 209, as amended, Ammiano. Environment: CEQA: lead agency: documents.

**The**

(1) *The* California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. ~~CEQA authorizes a lead agency to charge and collect a reasonable fee from a person proposing a project that is subject to CEQA to recover the estimated costs incurred by the lead agency in conducting the environmental review. CEQA requires a lead agency to submit a sufficient number of copies of the draft EIR, proposed negative~~

~~declaration, or proposed mitigated negative declaration, and an electronic version, to the State Clearinghouse for review and comment by state agencies under specified circumstances any lead agency that is preparing an environmental impact report or a negative declaration or making a specified determination to provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, adoption of the negative declaration, or making the determination, as prescribed. CEQA further requires that the notice to contain specified information, including the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.~~

~~This bill would delete the requirement to submit sufficient number of copies of the draft EIR, proposed negative declaration, or proposed mitigated negative declaration to the State Clearinghouse.~~

*This bill would additionally require that the notice include a description of how the draft environmental impact report or negative declaration can be provided in an electronic format. Because a lead agency would be required to provide this description in the notice, this bill would impose a state-mandated local program.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 21092 of the Public Resources Code is
- 2     amended to read:
- 3     21092. (a) ~~Any~~—A lead agency that is preparing an
- 4     environmental impact report or a negative declaration or making
- 5     a determination pursuant to subdivision (c) of Section 21157.1
- 6     shall provide public notice of that fact within a reasonable period
- 7     of time prior to certification of the environmental impact report,
- 8     adoption of the negative declaration, or making the determination
- 9     pursuant to subdivision (c) of Section 21157.1.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, ~~and~~ the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review, *and a description of how the draft environmental impact report or negative declaration can be provided in an electronic format.*

(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content, ~~provided that if~~ there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice, and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) ~~For any~~ a project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision. ~~This subdivision does not apply to any~~

1 ~~project for which notice has already been provided as of July 14,~~  
2 ~~1989, in compliance with this section as it existed prior to July 14,~~  
3 ~~1989.~~

4 (d) The notice requirements of subdivision (c) apply to both of  
5 the following:

6 (1) The construction of a new facility.

7 (2) The expansion of an existing facility ~~which~~ *that* burns  
8 hazardous waste which would increase its permitted capacity by  
9 more than 10 percent. For purposes of this paragraph, the amount  
10 of expansion of an existing facility shall be calculated by  
11 comparing the proposed facility capacity with whichever of the  
12 following is applicable:

13 (A) The facility capacity approved in the facility's hazardous  
14 waste facilities permit pursuant to Section 25200 of the Health and  
15 Safety Code or its grant of interim status pursuant to Section  
16 25200.5 of the Health and Safety Code, or the facility capacity  
17 authorized in any state or local agency permit allowing the  
18 construction or operation of a facility for the burning of hazardous  
19 waste, granted before January 1, 1990.

20 (B) The facility capacity authorized in the facility's original  
21 hazardous waste facilities permit, grant of interim status, or any  
22 state or local agency permit allowing the construction or operation  
23 of a facility for the burning of hazardous waste, granted on or after  
24 January 1, 1990.

25 (e) The notice requirements specified in subdivision (b) or (c)  
26 shall not preclude a public agency from providing additional notice  
27 by other means if the agency so desires, or from providing the  
28 public notice required by this section at the same time and in the  
29 same manner as public notice otherwise required by law for the  
30 project.

31 *SEC. 2. No reimbursement is required by this act pursuant to*  
32 *Section 6 of Article XIII B of the California Constitution because*  
33 *a local agency or school district has the authority to levy service*  
34 *charges, fees, or assessments sufficient to pay for the program or*  
35 *level of service mandated by this act, within the meaning of Section*  
36 *17556 of the Government Code.*

37 ~~SECTION 1. Section 21082.1 of the Public Resources Code~~  
38 ~~is amended to read:~~

39 ~~21082.1. (a) A draft environmental impact report,~~  
40 ~~environmental impact report, negative declaration, or mitigated~~

1 negative declaration prepared pursuant to the requirements of this  
2 division shall be prepared directly by, or under contract to, a public  
3 agency:

4 (b) ~~This section is not intended to prohibit, and shall not be~~  
5 ~~construed as prohibiting, any person from submitting information~~  
6 ~~or other comments to the public agency responsible for preparing~~  
7 ~~an environmental impact report, draft environmental impact report,~~  
8 ~~negative declaration, or mitigated negative declaration. The~~  
9 ~~information or other comments may be submitted in any format,~~  
10 ~~shall be considered by the public agency, and may be included, in~~  
11 ~~whole or in part, in a report or declaration.~~

12 (c) ~~The lead agency shall do all of the following:~~

13 (1) ~~Independently review and analyze any report or declaration~~  
14 ~~required by this division.~~

15 (2) ~~Circulate draft documents that reflect its independent~~  
16 ~~judgment.~~

17 (3) ~~As part of the adoption of a negative declaration or a~~  
18 ~~mitigated negative declaration, or certification of an environmental~~  
19 ~~impact report, find that the report or declaration reflects the~~  
20 ~~independent judgment of the lead agency.~~

21 (4) ~~Submit a draft of the environmental impact report, proposed~~  
22 ~~negative declaration, or proposed mitigated negative declaration~~  
23 ~~in an electronic form, as required by the guidelines adopted~~  
24 ~~pursuant to Section 21083, to the State Clearinghouse for review~~  
25 ~~and comment by state agencies, if any of the following apply:~~

26 (A) ~~A state agency is any of the following:~~

27 (i) ~~The lead agency.~~

28 (ii) ~~A responsible agency.~~

29 (iii) ~~A trustee agency.~~

30 (B) ~~A state agency otherwise has jurisdiction by law with respect~~  
31 ~~to the project.~~

32 (C) ~~The proposed project is of sufficient statewide, regional, or~~  
33 ~~areawide environmental significance as determined pursuant to~~  
34 ~~the guidelines certified and adopted pursuant to Section 21083.~~